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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Puente, *et al.*,

10 Plaintiffs,

11 v.

12 City of Phoenix, *et al.*,

13 Defendants.  
14

No. CV-18-02778-PHX-JJT

**ORDER**

15 At issue are two Motions related to the Court's resolution of the parties' pending  
16 Motions for Summary Judgment: Plaintiffs' Motion to Strike Defendants' Response to  
17 Plaintiffs' Notice of Supplemental Authority in Support of Opposition to Defendants'  
18 Motion for Summary Judgment (Doc. 323), and Plaintiffs' Motion to Unseal Exhibit 149  
19 to Plaintiffs' Motion for Partial Summary Judgment (Doc. 328).

20 In the former Motion (Doc. 323), Plaintiffs argue that Defendants' Response  
21 (Doc. 322) to Plaintiffs' Notice of Supplemental Authority (Doc. 321) was impermissible  
22 legal argument that the Court should not allow under Local Rule 7.2(m). Notices of  
23 supplemental authority are permitted for the narrow purpose of bringing the Court's  
24 attention to a case decided after the briefing on a pending motion. Plaintiffs' Notice did  
25 that and more; it also presented an argument in support of their opposition to Defendants'  
26 pending requests for summary judgment. As such, the Notice was more akin to a sur-reply  
27 (which Plaintiffs filed without leave of Court). Because Plaintiffs included argument in  
28 their Notice, the Court would have granted Defendants leave to respond had Defendants

1 requested it. Accordingly, the Court declines to strike Defendants' Response (Doc. 322) to  
 2 Plaintiffs' Notice (Doc. 321), and the Court will consider both in resolving the pending  
 3 summary judgment motions.

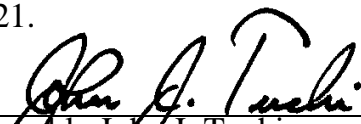
4 In the latter Motion (Doc. 328), Plaintiffs seek to unseal Exhibit 149, which they  
 5 filed under seal in conjunction with their summary judgment motion (Doc. 257-7), because  
 6 the contents of the Exhibit—a Facebook post by Sergeant Douglas McBride that shows the  
 7 image of his team's "new patch" after the officers' actions at the protests on August 22,  
 8 2017—have become public by way of news coverage and the city manager's reporting of  
 9 the results of a law firm's investigation into a challenge coin containing the same message  
 10 as the "new patch." Defendants argue that the information in Exhibit 149 is still private  
 11 because it was on the officer's Facebook page, but the Court disagrees. The "compelling  
 12 reason" for filing Exhibit 149—protection of private information—no longer exists,  
 13 because the information has become public. Indeed, the information in Exhibit 149 adds  
 14 little to that cited by Plaintiffs as already in the public domain. Without the requisite  
 15 compelling reason to keep information sealed "that outweigh[s] the historical right of  
 16 access and the public policies favoring disclosure," the Court must order Exhibit 149  
 17 unsealed. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006);  
 18 *see also Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016).

19 **IT IS THEREFORE ORDERED** denying Plaintiffs' Motion to Strike Defendants'  
 20 Response to Plaintiffs' Notice of Supplemental Authority in Support of Opposition to  
 21 Defendants' Motion for Summary Judgment (Doc. 323).

22 **IT IS FURTHER ORDERED** granting Plaintiffs' Motion to Unseal Exhibit 149  
 23 to Plaintiffs' Motion for Partial Summary Judgment (Doc. 328).

24 **IT IS FURTHER ORDERED** directing the Clerk of Court to unseal and file  
 25 Exhibit 149, currently filed under seal at Doc. 257-7.

26 Dated this 27th day of October, 2021.

27   
 28 Honorable John J. Tuchi  
 United States District Judge